Supreme Court, U.S.
FILED

961525 JAN 14 1997

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1996

GREGORY R. CZERKIES, PRO SE
PETITIONER,

VERSUS

UNITED STATES POSTAL SERVICE,
UNITED STATES DEPARTMENT OF LABOR,
RESPONDENTS

ON PETITION OF WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GREGORY R. CZERKIES
2005 BOEHME STREET
LOCKPORT, ILLINOIS 60441
815-838-3577

34 pp

QUESTIONS PRESENTED

1. Concerning Constitutional Challenges relating to Federal work related injuries, whether the Seventh Circuit's reliance on exhaustion of administrative remedies as a prerequisite for judicial review conflicts with other circuits and the Supreme Court.

2. If exhaustion of remedies does not bar petitioner's constitutional challenges, should res judicata and collateral estoppel bar issues unique to the instant case?

3. Did Seventh Circuit grossly fail to properly consider petitioner's pro se non movant status?

4. Who has the responsibility to initiate proceedings concerning 18 U.S.C. § 1922 (False or withheld report concerning Federal Employees Compensation ACT [FECA]?

5. In the scheme of FECA, does the employing agency have discretionary authority to disregard the statutory time allowance set by Congress for an injury report in favor of their own unlawful time limit?

6. If constitutional rights in relation to a work injury are violated and contribute to a wrongful discharge, should the injured worker regain his position with appropriate back pay and constitutional rights?

7. Do financial interests, judicial convenience, government cover-up, and skillful litigation outweigh the individual constitutional rights of a disabled person injured in the performance of duty while serving his country?

TABLE OF CONTENTS

page

QUESTIONS PRESENTED..... i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iv

OPINIONS BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED..... 1

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 8

I. The Court of Appeals Decision Conflicts with Other Circuits and this Court on an Important Federal Issue..... 8

II. The Objectives of the Federal Employees Compensation Act should not be Undermined by Unlawful Acting Federal Officials..... 10

III. The Court of Appeals and District Court Drastically Departed from Appropriate Judicial Proceedings and There is Need for this Court's Supervisory Power.....12

IV. To allow the Court of Appeals' Decision to Stand Erodes the U.S. Constitution by refusing Judicial Review of Legitimate cognizable Constitutional Challenges..... 17

APPENDIX

TABLE OF AUTHORITIES

CASES PAGE

Bowen v. Michigan Academy of Family 106 S. Ct. 2133 p. 2141 11

Califano v. Sanders 97 S. Ct. 980 p. 986 9

Conley v. Gibson 78 S. Ct. 98 p. 103 ..... 12, 13, 16

Czerkies v. U. S. Department of Labor 73.F.3d 1435 p. 1443 (1996) (en banc) 6, 14, 15

Hartford Fire Ins. Co. v. California 113 S. Ct. 2891 p. 2893 16

Haines v. Kerner 92 S. Ct. 594 13

Lockheed Aircraft Corp. v. United States 103 S. Ct. 1033 9

Rodrigues v. Donovan 769 F.2 d 1344 ..... 8, 10

Stanley v. Illinois 92 S. Ct. 1208 18

United States v. Lorenzetti 467 U. S. 167, 168 10

TABLE OF AUTHORITIES - Continued

CASES	PAGE
United States v. Udy 381 F. 2d 455	10
Woodruff v U. S. Department of Labor 954 F. 2d 634	9
5th Amendment to the U.S. Constitution	passim
5 U. S. C. § 8103 (a)	11
5 U. S. C. § 8119 (a)	12
18 U. S. C. § 1922	i, 14
20 CFR § 10. 207	13
20 CFR § 10.402 (a)	13

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner requests Writ of Certiorari to review judgement of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

Applicable 1981 Administrative/Agency decision (Zerox Copy A, pp.la-2a, lodged with Clerk). The decision of the District Court is believed by petitioner to be unpublished (Appendix A. infra., p. 1-a). The decision of the Seventh Circuit is unpublished. (Appendix B., infra, p. 1-b).

JURISDICTION

The judgement of the Seventh Circuit was entered either October 16, 1996 or October 17, 1996. This Court has jurisdiction to review the judgement under 28 U. S. C. § 1254 (1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment V.

No person shall...be deprived of life, liberty, or

property, without due process of law...

5 U. S. C. § 8103 (a)

> The United States shall furnish to an employee who is injured while in the performance of duty, the services...by a qualified physician...The employee may initially select a physician to provide medical services...

5 U. S. C. § 8119 (a)

A notice of injury ... shall - (a) be given within 30 days after the injury...

18 U. S. C. § 1922 (1981 version)

> "Whoever, being an officer or employee of the United States charged with the responsibility for making the reports of the immediate superior specified by Section 8120 of Title 5, willfully fails, neglects, or refuses to make any of the reports, or knowingly files a false report, or induces, compels, or directs an injured employee to forego filing of any claim for compensation or other benefits provided under subchapter 1 of Chapter 81 of Title 5 or any extension or application thereof, or willfully retains any notice, report, claim, or paper which is required to be filed under that

subchapter or any extension of application thereof, or regulations prescribed thereunder, shall be fined not more than $500 or imprisoned not more than one year, or both."

20 CFR § 10.207 (a) (3)

(a) Upon receiving notice that an employee has suffered an employment related traumatic injury an official superior shall: ...(3) Advise the employee of the right to elect continuation of regular pay or use annual or sick leave if the injury is disabling.

20 CFR § 10.402 (a)

(a) When an employee sustains a job-related injury which may require medical treatment, the designating agency official shall promptly authorize such treatment by giving the employee a properly executed CA-16...

STATEMENT OF THE CASE

Petitioner filed a timely report of injury and his only claim for medical treatment on September 3, 1981 (On appropriate CA-1 form) when a job related injury forced him to stop working (Zerox Copy A, p.1-a, lodged with Clerk).

Defendant Postal Service denied petitioner both

medical and continuation of pay ("C. O. P.") by stating "Injury on 8/31/81 was not reported until 9/3/81" ((Zerox Copy A, p.2-a, lodged with Clerk). C. O. P. is not compensation but an entitled benefit under "FECA" - Federal Employees Compensation Act.

Both defendants accepted the injury as job related. Although petitioner is no longer crippled, he is permanently disabled.

Defendant U. S. Department of Labor ("DOL") indicated that the Postal Service did not use proper procedures in denying the 1981 claim as DOL indicated that the injury report was timely filed. DOL stated that DOL has no jurisdiction over the case.

Petitioner in the instant case alleges that Postal Service's refusing to provide proper procedures in denying benefits under FECA constitutes procedural due process challenges under the Constitution. Petitioner contends that the manner which C. O. P. and his medical claim were decided denied him his procedural due process rights.

Petitioner alleges that DOL's refusal to take appropriate action when DOL knew that Postal Service's action was illegal concerning C. O. P. constitutes a due process challenge.

Approximately two months after the injury, petitioner was wrongly discharged from his employment. Since the discharge was substantially connected to the procedural due process violations concerning the injury, petitioner has also included this in the instant case.

After being discharged petitioner contacted his U. S. Representative and union representatives who eventually referred petitioner to DOL since a work related injury was the focal point.

After opposing DOL's leading, petitioner was finally induced by DOL to file another claim as his sole remedy. This claim in 1986 ((Zerox Copy B, pp. l-b - 2-b, lodged with Clerk)) was very distinctive from the 1981 injury report and claim for medical (Zerox Copy A, pp. l-a - 2-a, lodged with Clerk). The 1986 claim was for wage loss compensation which petitioner had previously opposed, desiring instead proper work and his rights.

The 1986 claim for wage loss compensation was denied by DOL and years of DOL administrative proceedings affirmed the denial indicating that the medical evidence was insufficient to DOL. Petitioner argued that the medical evidence was sufficient if DOL would take into consideration that the very limited medical evidence was a direct result that the petitioner was illegally denied medical care and

compelled to forego medical care because of significant wage loss and escalating medical expenses. DOL indicated that they refused to consider this argument as DOL stated that they have no jurisdiction over Postal Service's unlawful actions.

After his U. S. Representative indicated the case was ripe for a suit in Federal Court, petitioner, pro se, filed his first of three Federal suits naming only DOL as defendant. The court in 92C2151 indicated that petitioner was a temporary worker whose suit was to reverse DOL's (or Secretary of Labor's) 1986 decision denying wage loss compensation. The complaint raised no constitutional challenges.

Petitioner filed a second suit against only DOL which was dismissed (833 F. Supp 686). The court stated the claim was "nearly identical" to the previous suit.

Petitioner appealed and Seventh Circuit affirmed the judgement. Czerkies v. U. S. Dept. of Labor, 73 F.3d 1435 (en banc).

Petitioner filed his third and last suit. Clearly in his complaint and pleadings he raised three very distinct issues:

(1) He was denied by only Postal Service of procedural due process rights in the manner which his 1981 medical claim was denied. (Zerox Copy A, p 2-a, lodged with

Clerk).

(2) He was denied his due process rights by both defendants concerning C. O. P.

(3) While being denied his procedural due process rights in connection with his job related injury (which contributed to intolerable working conditions), petitioner was wrongly discharged from his employment.

The District Court dismissed. The Seventh Circuit affirmed stating that the suit was frivolous, that res judicata, collateral estoppel, and failure to exhaust administrative remedies were grounds for dismissing the suit.

In short, Petitioner believes that the District Court and Seventh Circuit fell into error by ignoring the plain reading of complaint and petitioner's pleadings and merely rubber stamped the defendant's distorted mischaracterization of the case. Petitioner also believes that exhaustion of remedies should not bar this suit, and res judicata and collateral estoppel are not applicable since the issues and cause of action are distinctive from previous suits.

Petitioner in his complaint raised Fifth amendment due process challenges against both Postal Service and DOL. The basis for Federal jurisdiction for the District Court is found in 28 U. S. C. § 1331.

REASONS FOR GRANTING THE WRIT

I. THE SEVENTH CIRCUIT'S RELIANCE ON EXHAUSTION OF REMEDIES AS PREREQUISITE TO DISTRICT COURT'S JURISDICTION CONFLICTS WITH OTHER CIRCUITS AND THE SUPREME COURT.

A. CONFLICT WITH THE NINTH CIRCUIT.

The Seventh Circuit conflicts directly with the Ninth Circuit's decision. "The Federal Employees' Compensation Act does not require exhaustion of administrative remedies as prerequisite to District Court's jurisdiction." Rodrigues v. Donovan 769 F.2d 1344 p. 1345.

The District Court in Rodrigues dismissed relying on the requirement of exhaustion of administrative remedies. The Ninth Circuit reversed.

The Seventh Circuit affirmed the District Court's reliance on exhaustion of remedies in the instant case. This is obviously in direct conflict with the Ninth Circuit's Rodrigues.

An injured worker, denied his procedural due process rights, has an open door for judicial review under the Ninth Circuit, but the door for judicial review is slammed closed under the Seventh Circuit. This violates equal protection under the laws.

B. CONFLICT WITH THE SUPREME COURT AND ELEVENTH CIRCUIT.

The Seventh Circuit certainly conflicts in principle and substance with Lockheed Aircraft Corp. v. United States 103 S. Ct. 1033 and Woodruff v. U. S. Department of Labor 954 F.2d 634 (Eleventh Circuit).

The Supreme Court in Lockheed stated "employees are guaranteed the right to receive immediate fixed benefits..." Similar language is found in Woodruff.

If an injured worker is barred from his guarantee of immediate benefits through being denied his procedural due process rights, it may take months or years to exhaust administrative procedures. Also, "Constitutional questions obviously are unsuited to resolution in administrative hearing procedures and, therefore, access to the courts is essential to the decision of such questions." Califano v. Sanders 97 S. Ct. 980 p. 986.

Whether the administrative procedures are under the Secretary of Labor or related to the Collective Bargaining Agreement, it makes no difference. They are still administrative procedures not suited for constitutional challenges concerning work related injuries. An injured worker denied his immediate benefits (not on the merits but through illegal unconstitutional procedures) should not have

to exhaust administrative remedies not suited to deal with constitutional questions.

It is significant to realize especially the danger of insisting that an injured worker exhaust remedies in order to receive medical attention. An injured worker, disabled and in severe pain, should not have to face an obstacle course to receive prompt medical care. This case is much stronger than the Rodrigues case because petitioner was denied (not on the merits but procedurally) appropriate medical care.

II. THE OBJECTIVES OF FECA SHOULD NOT BE UNDERMINED BY UNLAWFUL, UNCONSTITUTIONAL ACTS BY FEDERAL OFFICIALS.

Congress enacted FECA which "provides a comprehensive system of compensation for federal employees who sustain work-related injuries." United States v. Lorenzetti 467 U. S. 167, 168. "The Federal Employees' Compensation Act (FECA) should be liberally construed to effectuate its humane purposes." United States v. Udy 381 F. 2d 455.

The Postal Service's outlandish clearly unlawful behavior and DOL's callous indifference stripped a seriously injured (then totally disabled) worker of any immediate benefits. The defendants accomplished this horrifying act

through denying petitioner of his procedural due process rights.

> "We ordinarily presume that Congress intends the executive to obey its statutory commands and, accordingly, that it expects courts to grant relief when an executive agency violates such a command." Bowen v. Michigan Academy of Family 106 S. Ct. 2133 p. 2141.

Probably the most important provision under FECA is medical. Medical treatment is actually the only benefit that the injured worker can promptly receive. Compensation for wage loss cannot begin until at least 45 days.

Medical provisions are to be promptly provided with the initial choice of physicians belonging to the injured worker. 5 U.S. C. § 8103 (a). Medical care is to help the injured worker physically. It is for the health of the one injured while in the performance of duty.

Medical exams and treatment are also important to supply medical evidence which other entitlements (such as compensation for wage loss) depend. Medical (exam(s) and care) is the first and foremost entitlement under FECA. The defendants destroyed important medical care and medical evidence before it was allowed to surface.

A supervisor representing the Postal Service showed utter disregard for the Congressional 30-day injury reporting time. 5 U.S. C. § 8119 (a). The supervisor denied petitioner his procedural due process rights, medical care and C. O. P. by stating "Injury on 8/31/81 was not reported until 9/3/81." (Zerox Copy A, p. 2-a, lodged with Clerk).

The Postal Service later fired the injured unprovided for employee.

The reason the supervisor gave for "no medical" and no C. O. P. was not close to the letter of the law and is even much further from the purpose of which FECA was intended.

III. THE SEVENTH CIRCUIT'S FAILURE TO CONSIDER ISSUES RAISED BY COMPLAINT.

Petitioner has conceded that he failed in his first suit, 92C2151 in which the court then stated was to reverse a 1986 decision (for wage loss compensation).

This case is clearly distinctive. Should a pro se's failure at skillfully including proper issues or cause of actions in a previous case bar a suit which raises proper cognizable constitutional challenges?

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the

> outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Conley v. Gibson 78 S. Ct. 99 p. 103.

Further, pro se litigant's pleadings are to be held to less stringent standards. Haines v. Kerner 92 S. Ct 594.

A. PROCEDURAL DUE PROCESS RIGHTS

The petitioner contends in his complaint and pleadings that his procedural due process rights were that when he reported his injury on September 3, 1981, he should have been given an informed choice of C. O. P. (20 CFR § 10.207). Petitioner also should have received a properly executed CA-16 form. (20 CFR § 10.402). Petitioner was never given these procedures. He was denied his procedural due process rights. This is the focal point of the complaint.

Being given a properly executed CA-16 is procedural. It is not a voucher or a guarantee for medical care. It provides medical information (Is the injury job related? Does the claimant need medical care? , etc.). In fact, the information can be used against a claimant and even expose a false claimant. The CA-16 also, should open the door for providing medical care for one entitled to medical care.

These initial procedures to be provided were the initial and sole responsibility of the employing agency.

DOL's responsibility is to supply very distinctive procedures. DOL is to receive the information and either accept or reject the injury as being job related. (DOL did accept the injury as job related). Petitioner also believes that DOL could have at least investigated possible 18 U. S. C. § 1922 proceedings.

The procedures to be given by the employing agency and DOL are very distinctive. That is why this case is very distinctive from the previous cases.

B. POSTAL SERVICE'S UNCONSTITUTIONAL ACTIONS WERE NEVER CONSIDERED.

The Seventh Circuit plainly refused to even glance at the Postal Service's unconstitutional behavior in the previous case.

The amicus curiae lawyer pointed out that unlawful behavior began with the Postal Service's actions when the injury was reported. The Seventh Circuit rejected considering this as it came too late in that it was not in the complaint or pleadings.

> "On appeal, Czerkies, through the able lawyer whom we asked to present argument on his behalf as amicus curiae (Czerkies declined our

> offer to appoint counsel for him),[1] now argues that Czerkies was "front desked" --that is, his employing agency, the Postal Service, refused to accept his claim for filing. There is no hint of this theory of a due process violation in the complaint or other documents filed in the District Court; it comes too late." Czerkies v. U. S. Dept. of Labor 73 F 3d 1435 (7th Cir. 1996) p. 1443 en banc.

The Seventh Circuit wants it both ways. They refused to take into consideration the Postal Service's blatant, unlawful, unconstitutional behavior previously because the Postal Service's behavior was not an issue or cause of action in previous suits. The Seventh Circuit now insists, that when the petitioner for the first time makes cognizable procedural due process challenges against the Postal Service, the Seventh Circuit merely follows the defendants' leading and states that this case is identical to previous cases.

The defendant's distorted pleadings in dismissing the case were held as true and in the most favorable light to the moving defendants.

---

1. Czerkies never declined Seventh Circuit's offer to appoint counsel for him. This is another falsehood stated by the court. Czerkies was never offered counsel.

Petitioner's complaint did raise cognizable procedural due process challenges. In dismissing and affirming the dismissal, the decisions were squarely in conflict with the Supreme Court.

> "Complaint should not be dismissed for failure to state claim on which relief can be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Hartford Fire Ins. Co. v. California 113 S. Ct. 2891 p. 2893.

The Seventh Circuit virtually relied totally on the defendants' pleadings and ignored petitioner's complaint and pleadings.

The Seventh Circuit appeared unconcerned that "all pleadings shall be so construed as to do substantial justice", Conley v. Gibson 78 S. Ct. 99 p. 103.

The defendants' skillful (albeit misleading) litigation has induced the court to cover-up the defendants' flagrant, unlawful and unconstitutional actions beginning September 3, 1981. (Zerox Copy A, lodged with Clerk).

If one reads only the defendants' pleadings and the various decisions by the District Courts and the Court of

Appeals, one would believe that there was no medical claim on September 3, 1981 and that the petitioner did not file any administrative claim until 1986. The Court would have one believe that petitioner filed three (3) identical suits attempting to reverse a 1986 administrative decision and about an unrelated discharge.

If one reads the complaint and pleadings, one would get a different view. The fact is: Petitioner did file a claim on September 3, 1981 and was not only denied his entitlements under FECA but was also denied his procedural due process rights under the U. S. Constitution (which the Court has jurisdiction). The wrongful job termination was clearly related.

IV. THE COURT OF APPEALS DECISION ERODES THE U. S. CONSTITUTION

What happened is an atrocity and should not be tolerated in a civilized society. The Public at Large would surely recognize the great injustice.

If this Court, that is the Supreme Court allows the Seventh Circuit's erroneous decision to stand, then it would encourage Federal Officials to use any procedures, no matter how cruel, no matter how unlawful or no matter how unconstitutional to deny individuals their rights.

As much as the Petitioner realizes his incompetence in legalese and the need for judicial economy, nevertheless to allow a sell out of the Constitution for convenience sake should not be allowed.

> "The Constitution recognizes higher values than speed and efficiency; The Bill of Rights in general, and the due process clause in particular, were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency..." Stanley v. Illinois 92 S. Ct. 1208.

For the foregoing reasons, the petition for a Writ of Certiorari should be granted.

Submitted by
Gregory R. Czerkies
2005 Boehme Street
Lockport, Illinois 60441
815-838-3577

APPENDIX

Appendix A. District Court Decision a.1

Appendix B. Court of Appeals Decision b.1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GREGORY R. CZERKIES, Plaintiff, v. UNITED STATES POSTAL SERVICE, et al., Defendant.	No. 94C 7399

MEMORANDUM OPINION AND ORDER

Pending is defendant's Motion to Dismiss, or in the alternate Motion for Summary Judgment plaintiff's Second Amended Complaint. For the reasons stated below, defendants' Motion to Dismiss is granted.

FACTS

Plaintiff was a career appointed letter-carrier for the United States Postal service. Plaintiff injured his back on either August 31 or September 3, 1981. Subsequently, Plaintiff stopped working at the Postal Service as a result of his injury. Plaintiff attempted to come back to work about one month latter but could not perform the duties his supervisor assigned and left work without completing his

assignment. After this, defendants claim that plaintiff resigned his position while plaintiff claims defendant improperly terminated his employment.

Plaintiff has filed three suites in this court (92 C 2151, 93 C 3250 and 94 C 7399) over the matter. His first suit alleged that he was wrongly denied worker's compensation benefits. It was dismissed for want of jurisdiction in 1992. Plaintiff's second suit was a reiteration of the first simply substituting some parties and was likewise dismissed for lack of subject matter jurisdiction in 1993. That case is currently on appeal to the Court of Appeals. Plaintiff then instituted the present suit adding the United States Postal Service as a defendant, which alleges that the Postal Service violated his Fifth Amendment due process rights by terminating his employment and refusing to pay for plaintiff's medical bills. Plaintiff alleges that he informed his supervisor of his condition and his inability to complete a specific work session. Defendants claim that plaintiff resigned from his employment. Defendants contend that this court lacks subject matter jurisdiction over the matter because plaintiff failed to exhaust his administrative remedies. Defendants argue that the plaintiff did not avail himself of the any review process set up by plaintiff's union collective bargaining agreement with the Post Office. Further, defendants contend that this action is barred under the doctrine of *res judicata*.

DISCUSSION

I.

When considering a Motion to Dismiss, the court will look only to the four corners of the motion, and will accept all pleaded facts as true for the purpose of the motion. *Stauss v. Chicago,* 760 F.2d 765, 767 (7th Cir. 1985). The court will take the evidence in the light most favorable to the non-movant and if, under any set of facts, a reasonable jury could enter a verdict except for the moving party, the court will grant the motion. *Id.* Plaintiff, as a *pro se* party, is not held to the strict standards in pleading that an attorney is, and the court will construe a *pro se* party's, pleadings liberally. *Haines v. Kerner*, 404 U. S. 519, 521 (1972). However, if there is no way that plaintiff could prevail, dismissal is appropriate.

II.

Plaintiff claims that he was terminated from his employment by the Postal Service in violation of his Fifth Amendment due process rights, He claims that defendants improperly denied him medical care, or failed to pay for his medical care. Plaintiff contends that the defendants' action constituted an actionable constitutional violation. However, plaintiff provides no facts to demonstrate this violation.

Further, plaintiff had the opportunity to present his claims to the appropriate administrative bodies within the Postal Service as provided by law and the collective bargaining agreement between the Postal Service and plaintiff's union. Plaintiff has failed to allege that the Post Office refused him administrative review, nor has plaintiff alleged that the Post Office's actions somehow stopped him from pursuing those administrative avenues.

The applicable statute, 5 U.S.C. sec. 8128 (b) is very clear on the role, or lack thereof of the court in a denial of compensation. The law divests the courts of jurisdiction. Specifically, 5 U.S.C. sec. 8128 (b) provides;

> The action of the secretary [of Labor] or his designee in allowing or denying a payment under this subchapter is --
> (1) final and conclusive for all purposes...; and
> (2) not subject to review by another official of the United States or by a court by mandamus or otherwise.
> case law is clear that where the law provides a specific course of action for an aggrieved party to pursue a remedy, a court lacks jurisdiction to hear a claim unless a party has exhausted those administrative avenues.

5 U.S.C. sec 8128 (b). The statute is clear that courts do not have jurisdiction to review decisions by the Secretary of Labor denying compensation.

The cases cited by the defendants in their memorandum in support of their Motion to Dismiss are directly on point. In *Roman v. United States Postal Service*, a former postal employee brought a Fifth Amendment claim alleging the Post Office fraudulently induced him to resign. 821 F.2d 382, 383-84 (7th Cir. 1987). The Court of Appeals held that the former employee was required to exhaust all administrative remedies, and termed the action as one as a breach of the collective bargaining agreement. *Id.* at 387. Likewise in this case, plaintiff has not alleged that he took any administrative steps to resolve his situation. The decision in *Roman* is directly on point, and is dispositive of any compensation claims plaintiff may have alleged.

III.

Plaintiff seeks to circumvent his inability to use the courts to receive compensation by claiming the Department of Labor and the Post Office violated his Fifth Amendment rights in his termination and denial of compensation. Plaintiff raised this exact claim in his second suit, currently on appeal, and was rejected by District Court in 1993.

Plaintiff alleges in his Second Amended Complaint that he realized that the Post Office, as well as the Department of Labor was liable for his constitutional violations. However, like his last complaint, plaintiff's Second Amended Complaint is completely devoid of facts to support his claim. The plaintiff is asking this court to go around the 5 U.S.C. sec. 8128 (b) by using the Fifth Amendment without any facts to demonstrate a violation.

As the District Court held in 1993, citing *Riehl v. Brock,* 654 F.Supp. 879,881 (E.D. Mo. 1987), *aff'd*, 845 F.2d 1028 (8th Cir. 1988), plaintiff's constitutional claims are "insubstantial and designed to provide a jurisdictional base where none would otherwise exist." Plaintiff concedes in his complaint that it was improper for him to seek judicial review of the Department of Labor's denial of compensation on the one hand, and turns around and seeks just that. Further, plaintiff concedes that this suit was filed after additional research convinced him that the Post Office was also liable on the same theory as his earlier suit.

Since the plaintiff has not advanced any new information or alleged any new facts to bolster his constitutional claims, there is no basis for this court to counter the District Court's findings in 1993, or the Seventh's Circuit determination in *Roman.*

CONCLUSION

For the reasons stated above, the defendants' Motion to Dismiss for failure to state a claim upon which relief can granted is hereby granted.

Because we have granted the motion to dismiss for lack of subject matter jurisdiction, we need not reach the defendant's claim that Czerkies' suit is barred under the doctrine of *res judicata*, and that defendants are entitle to summary judgment.

SO ORDERED

ENTER: SEPTEMBER 8, 1995

"s/_____".

RONALD A. GUZMÁN

United States Magistrate Judge

Copies to:

Gregory R. Czerkies (pro se)
2005 Boehme Street
Lockport, IL 60441
815/838-3577

Ernest Yi Ling
United States Attorney's Office
219 South Dearborn Street - # 500
Chicago, Illinois 60604
312/353-5300

Unpublished order not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEAL

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 3, 1996

Decided October 16, 1996

before

Hon. Richard A. Posner, Chief Judge

Hon. Frank H. Easterbrook, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

GREGORY R. CZERKIES,	**}Appeal from the**
	} United States
Plaintiff-Appellant	**} District Court for**
	}the Northern District
No. 95-3223 v.	**} of Illinois,**
	} Eastern Division.
	} No. 94 C 7399
UNITED STATES POSTAL	**} Ronald A. Guzman,**
SERVICE and UNITED STATES	**} *Magistrate Judge***
DEPARTMENT OF LABOR,	**}**
Defendants-Appellees	**}**

ORDER

The appellant, Gregory Czerkies, was injured in the course of his employment by the Postal Service. After failing to obtain worker's compensation from the Department of Labor, he brought three essentially identical suits. In the first two, he claimed that the procedures employed by the

Department in processing his claim violated due process. Both suits were dismissed. The judgment in the first case was not appealed; the judgment in the second was affirmed, Czerkies v U.S. Dept. of Labor, 73 F.3d 1435 (7th Cir. 1996) (en banc). The third suit, which was also dismissed and which is the subject of the present appeal, is identical to the second except that it adds the U. S. Postal Service as a defendant and seeks reinstatement. Insofar as the suit attacks the Department of Labor (a codefendant), it is plainly barred by *res judicata*. Insofar as the suit attacks the Postal Service, it is equally clearly barred by collateral estoppel, because the attack is based entirely on the alleged denial of due process by the Department of Labor. These seem to us the most obvious grounds for dismissing the third suit. The district judge had another ground for the dismissal of the suit against the Postal Service--Czerkies' failure to exhaust his remedies under the collective bargaining agreement between his union and the Postal Service. And that is a good ground too.

In fact the suit and appeal are frivolous, and we warn Mr. Czerkies, who is not a lawyer and whose latest appeal brief reveals that he is not knowledgeable about the law, that it is time to close the books on the 1981 injury. Future frivolous litigation arising from that injury will result in the imposition of sanctions. This appeal, being frivolous is

DISMISSED.